

STEPS 4 & 5:

***Indirect Involvement,
Materiality Standard***

***Amend regulations
18704.2 and/or 18705.2***

ATTACHMENT 1:

Regulations 18704.2 and 18705.2

1 **STEP 4 – DIRECT/INDIRECT INVOLVEMENT**

2
3 **Amend**

4 **18704.2. Determining Whether Directly or Indirectly Involved in a Governmental**
5 **Decision: Interest in Real Property.**

6
7 (a) Real property in which a public official has an economic interest is
8 directly involved in a governmental decision if any of the following apply:

9 (1) The real property in which the official has an interest, or any part of that
10 real property, is located within 500 feet of the boundaries (or the proposed boundaries) of
11 the property which is the subject of the governmental decision. For purposes of
12 subdivision (a)(5), real property is located "within 500 feet of the boundaries (or
13 proposed boundaries) of the real property which is the subject of the governmental
14 decision" if any part of the real property is within 500 feet of the boundaries (or proposed
15 boundaries) of the redevelopment project area.

16 (2) The governmental decision involves the zoning or rezoning, annexation or
17 deannexation, sale, purchase, or lease, or inclusion in or exclusion from any city, county,
18 district or other local governmental subdivision, of the real property in which the official
19 has an interest or a similar decision affecting the real property. For purposes of this
20 subdivision, the terms "zoning" and "rezoning" shall refer to the act of establishing or
21 changing the zoning or land use designation on the real property in which the official has
22 an interest.

23 (3) The governmental decision involves the issuance, denial or revocation of a
24 license, permit or other land use entitlement authorizing a specific use or uses of the real
25 property in which the official has an interest.

1 (4) The governmental decision involves the imposition, repeal or modification of
2 any taxes or fees assessed or imposed on the real property in which the official has an
3 interest.

4 (5) The governmental decision is to designate the survey area, to select the project
5 area, to adopt the preliminary plan, to form a project area committee, to certify the
6 environmental document, to adopt the redevelopment plan, to add territory to the
7 redevelopment area, or to rescind or amend any of the above decisions; and real property
8 in which the official has an interest, or any part of it is located within the boundaries (or
9 the proposed boundaries) of the redevelopment area.

10 (6) The decision involves construction of, or improvements to, streets, water,
11 sewer, storm drainage or similar facilities, and the real property in which the official has
12 an interest will receive new or improved services.

13 (b) Notwithstanding subdivision (a) above, real property in which a public
14 official has an interest is not directly involved in a governmental decision, but is
15 indirectly involved if:

16 (1) The decision solely concerns the amendment of an existing zoning ordinance
17 or other land use regulation (such as changes in the uses permitted, or development
18 standards applicable, within a particular zoning category) which is applicable to all other
19 properties designated in that category, which shall be analyzed under Title 2, California
20 Code of Regulations, section 18705.2(b).

21 (2) The decision solely concerns repairs, replacement, or maintenance of existing
22 streets, water, sewer, storm drainage or similar facilities.

1 **{Dec 1}** (3) The decision is whether to adopt or amend a general plan, but only
2 identifies planning objectives or is otherwise exclusively one of policy and does not
3 concern an identifiable parcel or development project, or the agency's prior, concurrent
4 or subsequent approval of, or change to, a permit, license, zoning designation, zoning
5 variance, land use ordinance, or specific plan (or its equivalent). An agency's decision
6 whether to adopt or amend a general plan does not concern an identifiable parcel solely
7 because, in the proceeding before the agency in which the decision is made, the parcel is
8 included in a map or diagram offered in connection with the decision, and the map or
9 diagram depicts all parcels located within the agency's jurisdiction.

10 (c) Determining the applicable materiality standard.

11 (1) If the real property in which the public official has an economic interest is
12 directly involved in a governmental decision, apply the materiality standards in Title 2,
13 California Code of Regulations, section 18705.2(a).

14 (2) If a real property interest is not directly involved in a governmental decision,
15 apply the materiality standards in Title 2, California Code of Regulations, section
16 18705.2(b).

17 NOTE: Authority cited: Section 83112, Government Code.

18 Reference: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

STEP 5 – MATERIALITY STANDARD

Amend

18705.2. Materiality Standard: Economic Interests in Real Property.

(a) Directly involved real property.

(1) Real property, other than leaseholds. The financial effect of a governmental decision on the real property is presumed to be material. This presumption may be rebutted by proof that it is not reasonably foreseeable that the governmental decision will have any financial effect on the real property.

(2) Real property, leaseholds. The financial effect of a governmental decision on the real property in which an official holds a leasehold interest is presumed to be material. This presumption may be rebutted by proof that it is not reasonably foreseeable that the governmental decision will have any effect on any of the following:

(A) The termination date of the lease;

(B) The amount of rent paid by the lessee for the leased real property, either positively or negatively;

(C) The value of the lessee's right to sublease the real property, either positively or negatively;

(D) The legally allowable use or the current use of the real property by the lessee; or

(E) The use or enjoyment of the leased real property by the lessee.

(b) Indirectly involved real property interests.

(1) Real property, other than leaseholds. The financial effect of a governmental decision on real property which is indirectly involved in the governmental decision is presumed not to be material. This presumption may be rebutted by proof that there are specific circumstances regarding the governmental decision, its financial effect, and the

1 nature of the real property in which the public official has an economic interest, which
2 make it reasonably foreseeable that the decision will have a material financial effect on
3 the real property in which the public official has an interest.

4 (A) Examples of specific circumstances that will be considered include, but are not
5 limited to, circumstances where the decision affects:

6 ~~(A)~~ (i) The development potential or income producing potential of the real property
7 in which the official has an economic interest;

8 ~~(B)~~ (ii) The use of the real property in which the official has an economic interest;

9 ~~(C)~~ (iii) The character of the neighborhood including, but not limited to, substantial
10 effects on: traffic, view, privacy, intensity of use, noise levels, air emissions, or similar
11 traits of the neighborhood.

12 **{Dec 2}**(B) This subdivision (B) applies to a decision to adopt or amend a general
13 plan if the decision only identifies planning objectives or is otherwise exclusively one of
14 policy and does not concern an identifiable parcel or development project, or the
15 agency's prior, concurrent or subsequent approval of, or change to, a permit, license,
16 zoning designation, zoning variance, land use ordinance, or specific plan (or its
17 equivalent). Examples of specific circumstances that will be considered to rebut the
18 presumption that such a decision is not material include, but are not limited to, those
19 described in 2 Cal. Code Regs. section 18705.2(b)(1)(A)(i) – (iii), above. However, this
20 presumption will not be rebutted by circumstances where the decision affects only the
21 character of the neighborhood.

22 (2) Real property, leaseholds. The financial effect of a governmental decision on real
23 property in which a public official has a leasehold interest and which is indirectly

1 involved in the governmental decision is presumed not to be material. This presumption
2 may be rebutted by proof that there are specific circumstances regarding the
3 governmental decision, its financial effect, and the nature of the real property in which
4 the public official has an economic interest, which make it reasonably foreseeable that the
5 governmental decision will:

6 (A) Change the legally allowable use of the leased real property, and the lessee has a
7 right to sublease the real property;

8 (B) Change the lessee's actual use of the real property;

9 (C) Substantially enhance or significantly decrease the lessee's use or enjoyment of
10 the leased real property;

11 (D) Increase or decrease the amount of rent for the leased real property by 5+percent
12 during any 12-month period following the decision; or

13 (E) Result in a change in the termination date of the lease.

14 NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87100,
15 87102.5, 87102.6, 87102.8 and 87103, Government Code.